

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

TIM PROUTY,
Plaintiff

vs.

AUTOMOTIVE PROMOTION
CONSULTANTS, INC. D/B/A
TEXAS AUTO LIQUIDATORS
Defendant

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 5:11-cv-1122

Jury Trial Demanded

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NATURE OF ACTION

1. This is an action brought under the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* and its implementing Regulation Z (“Reg. Z.”), 12 C.F.R. Part 226 (collectively, “TILA”).

2. Service may be made upon Defendant in any other district in which it may be found pursuant to 29 U.S.C. §1132(e)(2).

JURISDICTION AND VENUE

3. This Court has jurisdiction under 15 U.S.C. § 1640(e) and 28 U.S.C. § 1331.

4. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this

district, where Plaintiff resides in this district, and/or where Defendant transacts business in this district.

PARTIES

5. Plaintiff, Tim Prouty (“Plaintiff”), is a natural person residing in Bexar County.

6. Defendant, Automotive Promotion Consultants, Inc. d/b/a Texas Auto Liquidators (“Defendant”) is an entity who at all relevant times and in the ordinary course of its business regularly extends or offers to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, making it a creditor within the meaning of the Truth in Lending Act, 15 U.S.C. § 1602(g) and Regulation Z, 12 C.F.R. 226.2(17).

FACTUAL ALLEGATIONS

7. On or about August 29, 2011, Plaintiff visited Texas Auto Liquidators to shop for an automobile to be used for personal, family or household purposes.

8. Plaintiff selected a 2002 Dodge Dakota and agreed to obtain the vehicle from Defendant for a total price, including taxes and fees of \$18,150.00.

9. As part of the agreement to obtain the vehicle, Plaintiff agreed to pay a down payment of \$4,500.00, the payment of which was deferred in 10 payments as follows:

- a. 9/03/2011 \$390.00
- b. 9/17/2011 \$390.00
- c. 10/01/2011 \$290.00
- d. 10/15/2011 \$290.00
- e. 10/29/2011 \$290.00
- f. 11/12/2011 \$290.00
- g. 11/26/2011 \$290.00
- h. 12/10/2011 \$290.00
- i. 12/24/2011 \$290.00
- j. 01/07/2012 \$190.00

10. For the payment of the remaining balance of \$13,650 Plaintiff executed a form entitled “Consumer Lease Agreement” (the “Agreement”) wherein he agreed to pay 65 bi-weekly payments of \$210.00 beginning on September 10, 2011. A true and correct copy of the Agreement is attached hereto as Exhibit “A” and incorporated herein by reference.

11. The Truth in Lending Act, 15 U.S.C. § 1602(h) defines a “credit sale” to include, “any contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has

the option to become, the owner of the property upon full compliance with his obligations under the contract.”

12. Pursuant to the Agreement, Plaintiff could purchase the vehicle after making all of the scheduled payments by paying the nominal fee of \$210.00 plus official fees and taxes making the Agreement a credit sale under TILA.

13. Moreover, in connection with the Agreement, Defendant provided Plaintiff with a Truth in Lending Disclosure Statement (“Disclosure”) dated August 29, 2011. A true and correct copy of the Disclosure is attached hereto as Exhibit “B” and incorporated herein by reference.

14. The Truth in Lending Disclosure statement disclosed an annual percentage rate of 0%, a finance charge of \$0, an amount financed of \$13,650.00, a total of payments of \$13,650.00 and a total sales price, including the down payment amount of \$4,500.00 of \$18,150.00.

15. In addition, the Truth in Lending Disclosure statement disclosed the deferred down payments described in paragraph 4 in a section labeled “Pickup Detail.”

16. The Truth in Lending Act requires that the amount of a deferred down payment be included in the disclosure of the amount financed, as well as the schedule of payments unless deferred amount is paid no later than the due date of the second regularly scheduled payment. 12 C.F.R. 226.2(a)(18).

COUNT I
FEDERAL TRUTH IN LENDING ACT

17. Plaintiff repeats and re-alleges each and every allegation contained above.

18. Defendant violated the requirements of the Truth in Lending Act and Regulation Z in the following and other respects:

- a. By incorrectly disclosing the amount financed in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z, 12 C.F.R. 226.18(b);
- b. By incorrectly disclosing the amount of total of payments in violation of 15 U.S.C. § 1638(a)(5) and 12 CFR 226.18(h); and
- c. By incorrectly disclosing the payment schedule in violation of 15 U.S.C. § 1638(a)(6) and Regulation Z, 12 C.F.R. 226.18(g).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. §§ 1638(a)(2), (a)(5) and (a)(6) and Regulation Z, 12 C.F.R. 226.18(b), (h) and (g);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1640(a)(2), in the amount of twice the finance charge, not to be less than \$200.00 and not to exceed \$2,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1640(a)(1);

- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper

TRIAL BY JURY

19. Plaintiff is entitled to and hereby demands a trial by jury.

Respectfully submitted,

By: /s/ Dennis R. Kurz
Dennis R. Kurz
Texas State Bar # 24068183
Attorney in Charge for Plaintiff

WEISBERG & MEYERS, L.L.C.
Two Allen Center
1200 Smith Street
16th Floor
Houston, TX 77002
(888) 595-9111 ext. 412
(866) 565-1327 (fax)

CERTIFICATE OF SERVICE

I certify that on December 28, 2011, I electronically filed the foregoing document with the clerk of the U.S. District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the court.

/s/ Dennis R. Kurz
Dennis R. Kurz